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WHEREAS, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (U.S. EPA) filed a complaint in this matter against United States Ceramic Tile Company (U.S. Ceramic) pursuant to Section 3008(a) and (h) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (Also referred to as the Resource Conservation and Recovery Act, or RCRA); and

WHEREAS, the United States in its complaint seeks at the U.S. Ceramics facility, located at 10233 Sandyville Road, East Sparta, Ohio (the "Facility" as more fully defined below), inter alia, compliance with RCRA hazardous waste closure requirements, compliance with RCRA financial assurance and financial liability coverage requirements, and RCRA corrective action; and

WHEREAS, on November 30, 1988, U.S. Ceramic entered into a federal Consent Decree (Civil Action No. C86-5152A) with the United States on behalf of the U.S. EPA, settling a complaint and amended complaint filed by the United States pursuant to RCRA Section 3008(a) (1988 Judicial Consent Decree); and

WHEREAS, the Complaint alleges that U.S. Ceramic violated the 1988 Judicial Consent Decree and the requirements of the federal and state hazardous waste programs by failing to comply with the approved Closure Plan requirements and failing to use best efforts to obtain financial assurance and liability coverage; and

WHEREAS, the United States and U.S. Ceramic have agreed to entry of this Consent Decree to compromise and settle claims stated in the Complaint against U.S. Ceramic as well as any alleged violations of the 1988 Judicial Consent Decree without further litigation, and that this Consent Decree will supercede the 1988 Judicial Consent Decree which will terminate upon entry of this Consent Decree; and

WHEREAS, by their respective undersigned representatives, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest; and

WHEREAS, there has been no trial, adjudication, or admission by the Parties of any issue of fact or law relating to this action, and the Parties are entering into this Consent Decree solely for the purposes of settlement.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter of this action under Section 3008(a) and (h) of RCRA, 42 U.S.C. § 6928(a) and (h), and 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper under Section 3008(a) and (h) of RCRA, 42 U.S.C. § 6928(a) and (h), and 28 U.S.C.



§ 1391(b) because the U.S. Ceramic Facility (defined below) is located in this district and because the alleged violations occurred in this district. This Court also has personal jurisdiction over U.S. Ceramic. Solely for the purposes of this Consent Decree and the underlying complaint, U.S. Ceramic waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this district. The Complaint states claims on which the Court can grant relief against the Defendant. U.S. Ceramic shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree. U.S. Ceramic shall not challenge the terms of this Consent Decree, except in accordance with the dispute resolution mechanism provided herein at Section XVI (Dispute Resolution).

## **II. BACKGROUND**

- 2., U.S. EPA makes the determinations set forth below. U.S. Ceramic does not admit any liability arising out of these determinations, nor any issue of fact or law relating to these determinations except as otherwise expressly provided for in this Consent Decree.
3. U.S. Ceramic is a company doing business in the State of Ohio and is a person as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
4. Since at least 1923, U.S. Ceramic (or its predecessors)

has engaged in the manufacture and sale of ceramic tile at its Facility, located on approximately 800 acres of land, at 10233 Sandyville Road, East Sparta, Ohio 44626. The 800-acre parcel is bordered by Nimishillen Creek to the east and by the town of East Sparta to the north. Strip mined uplands are located to the west of the Facility and the town of Sandyville is located approximately one-half mile to the south. See Figure 1: U.S. Ceramic's Facility.

5. U.S. Ceramic was a generator of hazardous waste and treated, stored or disposed of hazardous waste at the Facility in a surface impoundment and waste pile subject to interim status requirements at 40 C.F.R Part 265.
6. The Facility generated equipment wash water containing hazardous constituents. Historically, the wash water was discharged to an unlined surface impoundment to allow suspended solids to settle out prior to discharge into Nimishillen Creek. U.S. Ceramic occasionally dredged the surface impoundment and placed the sediment along the surface impoundment perimeter in a waste pile. The sediment was later determined to exhibit the characteristic of Extraction Procedure (EP) toxicity.
7. A Consent Decree (Civil Action No. C86-5152A) was entered on November 30, 1988, between U.S. Ceramic and

the United States on behalf of U.S. EPA, in settlement of a complaint and amended complaint filed by the United States pursuant to Section 3008(a) of RCRA (1988 Judicial Consent Decree). The 1988 Judicial Consent Decree required U.S. Ceramic to cease all treatment, storage and disposal of hazardous waste at the Facility, except in accordance with the EPA-approved closure plan. It also required U.S. Ceramic to implement a groundwater monitoring program, and to use best efforts to meet financial assurance and financial liability coverage requirements as mandated by RCRA.

8. A requirement of the Facility closure plan, approved by U.S. EPA and the Ohio EPA, was the construction of a RCRA landfill at the U.S. Ceramic Facility for the purpose of disposing of hazardous waste and contaminated soils from the Facility's surface impoundment and waste pile. U.S. Ceramic constructed a 2.984-acre landfill at the north end of the former surface impoundment at its Facility. U.S. Ceramic submitted a closure certification to U.S. EPA and Ohio EPA on August 1, 1994.
9.
  - a. Ohio EPA has not accepted U.S. Ceramic's closure certification.
  - b. U.S. EPA and Ohio EPA allege that U.S. Ceramic violated the 1988 Judicial Consent Decree and the

requirements of the federal and/or state hazardous waste programs by not complying with the requirements of the Closure Plan and by not complying with the requirements to use best efforts to obtain financial assurance and financial liability coverage.

c. Following Ohio EPA's participation in the negotiations that resulted in this Consent Decree and Attachments, and as a part of this settlement, the Director of Ohio EPA has issued Director's Final Findings and Order (DFFO), effective upon entry of the DFFO in the Ohio EPA Director's Journal on June 23, 2004. The DFFO grants U.S. Ceramic an exemption under Section 3734.02(G) of the Ohio Revised Code from the state hazardous waste program with respect to the former surface impoundment and waste pile and the existing landfill (as more particularly detailed in the DFFO).

10. U.S. Ceramic has conducted a groundwater assessment monitoring program since June 1989 in connection with the former surface impoundment and waste pile. Metals, including arsenic, barium, cadmium, chromium, lead, and zinc, have been detected in groundwater.
11. The effluent from the discharge at the southern end of the former surface impoundment was subject to NPDES permit #3IN00035001. During the period when the

surface impoundment was in use, the effluent discharged to Nimishillen Creek from the Facility on occasion exceeded the NPDES-permitted discharge limits for lead and zinc which were set to protect aquatic life habitat in Nimishillen Creek.

12. An EP toxicity analysis of sediments dredged from the surface impoundment and stored in the waste pile was performed on grab samples collected December 15 and 16, 1986. The concentrations of barium, cadmium and lead exceeded the respective maximum concentration for each contaminant and the waste pile was determined to be a hazardous waste.
13. Certain wastes found at the Facility are hazardous wastes pursuant to Sections 1004(5) and 3001 of RCRA; 42 U.S.C. §§ 6903(5) and 6921; 40 C.F.R. Part 261; and Subpart S, 40 C.F.R. § 264.501, 55 Fed. Reg. 30874 (July 27, 1990), and may pose actual or potential threats to human health or the environment.
14. U.S. EPA contends that there is or has been a release of hazardous waste(s) into the environment from the Facility and the actions required by this Consent Decree are necessary to protect human health and/or the environment.

### III. DEFINITIONS

15. This Consent Decree incorporates the definitions in RCRA and the regulations promulgated under RCRA.

Subparagraph a. provides common abbreviations and acronyms, and subparagraph b. provides additional definitions.

a. The following abbreviations and acronyms shall apply to this Consent Decree.

- |       |          |  |
|-------|----------|--|
| i.    | AOC      | Area of Concern  |
| ii.   | CERCLA   | Comprehensive Environmental Response,<br>Compensation, and Liability Act |
| iii.  | C.F.R.   | Code of Federal Regulations  |
| iv.   | CMI      | Corrective Measures Implementation                                       |
| v.    | CMS      | Corrective Measures Study  |
| vi.   | DFFO     | Director's Final Findings and Order                                      |
| vii.  | DOCC     | Description of Current Conditions Report                                 |
| viii. | IM       | Interim Measures   |
| vix.  | NPDES    | National Pollutant Discharge Elimination<br>System                       |
| x.    | Ohio EPA | Ohio Environmental Protection Agency                                     |
| xi.   | PR       | Preliminary Review   |
| xii.  | QA/QC    | Quality Assurance/Quality Control  |
| xiii. | RCRA     | Resource Conservation and Recovery Act                                   |
| xiv.  | RFI      | RCRA Facility Investigation  |

- xv. SOW Scope of Work
- xvi. SWMU(s) Solid Waste Management Unit(s)
- xvii. U.S.C. United States Code
- xviii. U.S. EPA United States Environmental Protection Agency
- xix. VSI Visual Site Inspection

b. The following additional definitions shall apply to this Consent Decree.

- i. Additional Work shall mean any activity or requirement that is not expressly covered by this Consent Decree or its attachments but is necessary to fulfill the purposes and objectives of this Consent Decree as presented in Section IV (Statement of Purpose) and subject to Section XVI (Dispute Resolution).
- ii. Administrative Record shall mean a record for a specific U.S. EPA decision document, compiled and maintained by U.S. EPA, including U.S. Ceramic's submitted documents, such as a record relating to a dispute pursuant to paragraph 108, below, or a record relating to the selection of corrective measures.
- iii. Area of Concern shall mean any area of the Facility under the control or ownership of

U.S. Ceramic where a release to the environment of hazardous waste(s) or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.

- iv. CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.
- v. Contractor shall include any contractor, subcontractor, consultant or laboratory retained to conduct or monitor any portion of the work performed pursuant to this Consent Decree.
- vi. Corrective Measures shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of hazardous waste or hazardous constituents into the environment at or from the Facility.
- vii. Corrective Measures Implementation or CMI shall mean those activities necessary to initiate, complete, monitor, and maintain the remedies U.S. EPA has selected or may select to protect human health and/or the



environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment from the Facility. The CMI requirements are detailed in the CMI Scope of Work included as Attachment IV.

viii. Corrective Measures Study or CMS shall mean the investigation and evaluation of potential remedies that will protect human health and/or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment at or from the Facility. The CMS requirements are detailed in the CMS Scope of Work included as Attachment III.

ix. Day shall mean a calendar day unless expressly stated to be a business day. Business day shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next business day.

x. EPA or U.S. EPA shall mean the United States Environmental Protection Agency, and any

successor Departments or Agencies of the United States.

- xi. Facility shall mean the U.S. Ceramic Tile manufacturing Facility located at 10233 Sandyville Road, East Sparta, Ohio, and all contiguous property under the control or ownership of U.S. Ceramic, its successors and/or assigns.
- xii. Hazardous Constituents shall mean those hazardous waste constituents that caused the Administrator to list the hazardous waste in 40 C.F.R. Part 261, Subpart D, or a constituent listed in table 1 of 40 C.F.R. § 261.24.
- xiii. Hazardous Waste shall mean hazardous waste as defined in Section 1004(5) of RCRA or 40 C.F.R. §260.10.
- xiv. Hazardous Waste Management Unit or HWMU shall mean a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its

associated piping and underlying containment system, and a container storage area. A container alone does not constitute a hazardous waste management unit; the unit includes containers and the land or pad upon which they are placed.

xv. Innovative Treatment Technologies shall mean those technologies for treatment of soil, sediment, sludge, and debris other than incineration or solidification - stabilization and those technologies for treatment of groundwater contamination that are alternatives to pumping with conventional treatments like air stripping and ultraviolet light oxidation.

xvi. Interim Measures or IM shall mean those actions, which can be initiated in advance of implementation of the final corrective action for the Facility, to achieve the goal of stabilization. Interim Measures initiate cleanup at a facility and control or eliminate the release or potential release of hazardous wastes, including hazardous constituents, at or from a facility. The general IM requirements are detailed in the IM Scope of Work included as Attachment I.

Certain specific IM requirements agreed to by the Parties, in consultation with Ohio EPA, are detailed in the Conceptual Approach for Landfill Interim Measures included as Attachment VIII.

xvii. Ohio EPA or OEPA shall mean the Ohio Environmental Protection Agency, and any successor Departments or Agencies of the State of Ohio.

xviii. Party or Parties shall mean the United States Environmental Protection Agency (and the United States acting on behalf of the U.S. EPA) and United States Ceramic Tile Company (including its predecessors Ceramicus Inc., Romany Ceramics, Inc., and Sparta Mosaics, Inc.).

xix. Primary Contractor shall mean the professional engineer, geologist, or environmental scientist that has expertise in hazardous waste or contaminated soil and groundwater site cleanup that is hired by U.S. Ceramic pursuant to this consent decree.

xx. RCRA Facility Investigation or RFI shall mean the investigation and characterization of the source(s) of contamination and the nature, extent, direction, rate, movement, and concentration of the source(s) of contamination and releases of

hazardous waste, including hazardous constituents, that have been or are likely to be released into the environment from the Facility. The activities required for the RFI are detailed in the RFI Scope of Work included as Attachment II.

xxi. Receptors shall mean those humans, animals, or plants and their habitats that are or may be affected by releases of hazardous waste from or at the Facility.

xxii. Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of hazardous wastes or hazardous constituents into the environment.

xxiii. Scope of Work or SOW shall mean the outline of work U.S. Ceramic must use to develop all workplans and reports required by this Consent Decree as set forth in this Consent Decree and its Attachments. The SOW Attachments to this Consent Decree are as follows: I, Interim Measures Scope of Work; II, RCRA Facility Investigation Scope of Work; III, Corrective Measures Study Scope of Work; IV, Corrective Measures Implementation Scope of Work; and VIII, Conceptual Approach for Landfill Interim Measures. All SOW Attachments,

and modifications, or amendments thereto, are incorporated into this Consent Decree and are an enforceable part of this Consent Decree.

xxiv. Solid Waste Management Unit or SWMU shall mean any discernible unit at which solid wastes have been placed at any time irrespective of whether the unit was intended to be used for the management of solid or hazardous waste. Such units include any area at the Facility where solid wastes have been routinely and systematically released.

xxv. Stabilization shall mean controlling or abating immediate threats to human health and/or the environment from releases or threats of releases, and/or preventing or minimizing the spread of hazardous wastes while long-term corrective measures alternatives are being evaluated or implemented.

xxvi. Submittal shall include any workplan, report, progress report, or any other written document U.S. Ceramic is required by this Consent Decree to send to U.S. EPA.

xxvii. Work or Obligation shall mean any activity U.S. Ceramic must perform to comply with the requirements of this Consent Decree and its attachments.

xxviii. Workplan shall mean the detailed plans prepared by U.S. Ceramic to satisfy the requirements of the Consent Decree, the U.S. EPA selected remedy and the corresponding Scope of Work. The requirements for each workplan are presented in Section VIII (Work to be Performed), and/in Attachments I-IV and VIII.

#### IV. STATEMENT OF PURPOSE

16. In entering into this Consent Decree, the mutual objectives of U.S. EPA and U.S. Ceramic are:
- a. To perform Interim Measures (IM) at the Facility to relieve any threats to human health and/or the environment;
  - b. To perform a RCRA Facility Investigation (RFI) to determine fully the nature and extent of any release of hazardous waste at or from the Facility;
  - c. To perform a Corrective Measures Study (CMS) to identify and evaluate alternatives for the corrective measures necessary to prevent, mitigate, and/or remediate any releases of hazardous wastes at or from the Facility;
  - d. To implement the Corrective Measures(s) selected by U.S. EPA that are necessary to prevent,

mitigate, and/or remediate any releases of hazardous wastes at or from the Facility;

- e. To perform any other activities necessary to correct and/or evaluate actual or potential threats to human health and/or the environment resulting from the release or potential release of hazardous waste at or from the Facility;
- f. To settle the civil claims of the United States that are alleged in the Complaint filed in this action; and
- g. To resolve the civil claims of the State of Ohio relating to the violations and/or deficiencies alleged by Ohio EPA that are generally described in the State of Ohio DFFO, effective June 23, 2004.

#### **V. PARTIES BOUND**

- 17. This Consent Decree shall apply to and bind the United States, U.S. Ceramic and its officers, directors, employees, agents, successors and assigns, trustees, receivers, and all persons, including but not limited to contractors, acting on behalf of U.S. Ceramic.
- 18. No change in ownership or corporate or partnership status relating to the Facility will in any way alter U.S. Ceramic's responsibility under this Consent



Decree. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, shall not affect U.S. Ceramic's obligations under this Consent Decree. U.S. Ceramic will be responsible for and liable for any failure to carry out all activities required of U.S. Ceramic by the terms of the Consent Decree, regardless of U.S. Ceramic's use of employees, agents, or contractors to perform any such tasks.

19. U.S. Ceramic shall provide a copy of this Consent Decree to all contractors and laboratories retained to conduct or monitor any portion of the work performed pursuant to this Consent Decree within 14 days of the entry of this Consent Decree or the retention of such person(s), whichever occurs later, and shall condition all such contracts on compliance with the terms of this Consent Decree.

20. At least 30 days when practicable, but no less than 10 days, prior to the conveyance of any interest in the Facility or its operations, or a portion thereof including, but not limited to, fee interests, leasehold interests, and mortgage interests, U.S. Ceramic shall give written notice of this Consent Decree to any successor in interest and shall concurrently notify U.S. EPA in writing of the proposed conveyance, the interest being conveyed, and the identity of the party

receiving the interest.

21. U.S. Ceramic agrees to undertake all actions required by the terms of this Consent Decree, including any portions of this Consent Decree incorporated by reference.
22. With respect to this Consent Decree, U.S. Ceramic waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Consent Decree without a hearing pursuant to Section 3008(b) of RCRA as a Consent Order issued pursuant to Section 3008(h) of RCRA.

#### **VI. CIVIL PENALTY PAYMENT**

23. U.S. Ceramic shall pay a civil penalty of \$1.27 million to the United States within 30 days after entry of this Consent Decree. U.S. Ceramic shall pay the penalty by a Fedwire Electronic Funds Transfer ("EFT") to the New York Federal Reserve Bank/U.S. Treasury Department, pursuant to instructions to be provided by the United States, referencing the United States Attorney Office "USAO" file number 2004V00200, U.S. EPA Region V, and the Department of Justice case number 90-7-1-376A. Any EFTs received by the New York Federal Reserve Bank after 4:00 p.m. (Eastern Time) will be credited to the next working day. At the time of payment, U.S. Ceramic

shall send notice of payment and a copy of any transmittal documentation to the United States as specified in Section XXIII (Notice and Submissions) and to the Financial Management Officer (MF-10J), U.S. EPA Region V, Office of Technical and Management Services, 77 W. Jackson Blvd., Chicago, Illinois 60604.

24. Interest shall begin to accrue on any unpaid civil penalty balance on the day after payment is due. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, an additional penalty of six percent per annum on any unpaid principal shall be assessed for any civil penalty payment that is overdue for 90 or more days.

#### **VII. PROJECT COORDINATOR**

25. Within 15 days of the effective date of this Consent Decree, U.S. EPA and U.S. Ceramic shall each designate a Project Coordinator. U.S. Ceramic shall notify U.S. EPA in writing of the Project Coordinator it has selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Decree and for designating a person to act in their absence. The U.S. EPA Project Coordinator will be U.S. EPA's designated representative for the Facility. To the maximum extent practicable, all

communications between U.S. Ceramic and U.S. EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Consent Decree shall be directed through the Project Coordinators.

26. The Parties agree to provide written notice at least 14 days prior to changing a Project Coordinator, or within 5 days after any unanticipated change in their respective Project Coordinator.
27. The absence of the U.S. EPA Project Coordinator from the Facility shall not be cause for the stoppage of work.

#### **VIII. WORK TO BE PERFORMED**

28. Pursuant to Sections 3008(a) and 3008(h) of RCRA, U.S. Ceramic shall perform the acts specified in this section, in the manner and by the dates specified herein. All work and/or submittals required by this Consent Decree are subject to U.S. EPA approval in accordance with Section IX: Agency Approvals/Proposed Contractor. All work undertaken pursuant to this Consent Decree shall be performed in a manner consistent with, at a minimum: (1) all Scopes of Work and U.S. EPA-approved workplans incorporated in this Consent Decree; (2) RCRA and other applicable federal laws and their implementing regulations; and (3)

applicable or relevant U.S. EPA guidance documents. Guidance may include, but is not limited to, documents listed in Attachment VI: References. The Scopes of Work attached to this Consent Decree (Attachments I to IV) contain generic descriptions of work that U.S. Ceramic shall use as guides and outlines for developing the detailed work plans required under this Consent Decree and the Corrective Measures Study Report (for which a workplan is not required).

**A. Interim Measures**

29. U.S. EPA and U.S. Ceramic, in consultation with and with the concurrence of Ohio EPA, have identified the need for certain Interim Measures at the Facility. These Interim Measures are incorporated into this Consent Decree as Attachment VIII, Conceptual Approach for Landfill Interim Measures.
30. Within 90 days of the effective date of this Consent Decree, U.S. Ceramic shall submit to U.S. EPA a Landfill Interim Measures Workplan for the implementation of the work described in Attachment VIII, Conceptual Approach for Landfill Interim Measures. The Landfill Interim Measures Workplan shall be developed in a manner consistent with the IM Scope of Work, Attachment I and shall include an Interim Operations and Maintenance (O&M) Plan.

31. Within 120 days of the effective date of this Decree, U.S. Ceramic shall evaluate currently available data and assess the need for further Interim Measures. Based on information known to U.S. EPA as of the date of this Decree, U.S. EPA has not identified the need for any Interim Measures beyond those described in the Conceptual Approach for Landfill Interim Measures. Interim Measures shall be used whenever possible to achieve the initial goal of stabilization.

- a. If U.S. Ceramic identifies an immediate threat or potential immediate threat to human health and/or the environment, U.S. Ceramic shall notify the U.S. EPA Project Coordinator orally within 48 hours of discovery, and notify U.S. EPA in writing within 14 days of such discovery summarizing the immediacy and magnitude of the potential threat(s) to human health and/or the environment. If U.S. Ceramic discovers new releases of hazardous wastes, or discovers new Solid Waste Management Units, Hazardous Waste Management Units, or Areas of Concern not previously identified, U.S. Ceramic shall notify, in writing, U.S. EPA within 14 days of such discovery summarizing the immediacy and magnitude of any potential threat(s) to human health and/or the environment. U.S. Ceramic may

at any time propose additional Interim Measures that U.S. Ceramic believes are appropriate, but that may not be necessitated by an immediate threat or potential immediate threat, or related to a newly-identified SWMU or AOC or release.

b. If U.S. EPA identifies an immediate threat or potential immediate threat to human health and/or the environment; discovers new releases of hazardous wastes; or discovers new Solid Waste Management Units, Hazardous Waste Management Units, or Areas of Concern not previously identified, U.S. EPA will notify U.S. Ceramic in writing.

c. Within 30 days of receiving the U.S. EPA's written notification or U.S. EPA's written request in response to a notification by U.S. Ceramic, U.S. Ceramic shall submit to the U.S. EPA an IM Workplan in accordance with the IM Scope of Work in Attachment I, if so requested by U.S. EPA.

d. If U.S. EPA determines that immediate action is required based on actual or potential threat to human health and/or the environment, U.S. EPA's Project Coordinator may orally require U.S. Ceramic to act prior to:

1. U.S. Ceramic's receipt of U.S. EPA's written notification;

2. U.S. EPA's receipt of the IM Workplan; or
3. U.S. EPA's approval of the IM Workplan.

**B. RCRA Facility Investigation**

32. Within 120 days of the effective date of this Consent Decree, U.S. Ceramic shall submit to U.S. EPA for review and comment a Description of Current Conditions Report (DOCC). The DOCC shall be developed in a manner consistent with the RFI Scope of Work in Attachment II.
33. U.S. Ceramic shall submit to U.S. EPA a Workplan for a RCRA Facility Investigation (RFI) within 90 days of receipt of U.S. EPA's comments on the DOCC. The RFI Workplan shall be developed in a manner consistent with the RFI Scope of Work in Attachment II. A Preliminary Review/Visual Site Inspection (PR/VSI), performed on July 3, 1990, identified eight Solid Waste Management Units (SWMUs) at the Facility. In 1999, U.S. EPA conducted an historical aerial photographic analysis of the Facility and a site visit. The updated list of SWMUs and AOCs to be addressed by the RFI is attached and incorporated into this Consent Decree as Attachment VII. The RFI Workplan shall implement the following principles:
  - a. Absent the discovery of new information, the scope of the RFI shall be limited to: 1) the potential impact of all documented solid waste fill areas at



the Facility on soil, surface water, sediment, and groundwater, including an assessment of groundwater flow patterns in the vicinity of the fill area(s); 2) the Romany plant wastewater treatment system to the extent necessary based on the results of an evaluation of the system's integrity; and 3) the potential impact of surface water drainage in the vicinity of the Romany plant on Nimishillen Creek;

- b. The scope of the RFI shall not include areas solely used for mining (clay or coal) at or in the vicinity of the Facility;
- c. RFI data collection shall be limited to constituents of potential interest based on those hazardous constituents known or suspected to be associated with past or present operations at the Facility, or limited to hazardous constituents of potential interest based upon new information or new conditions at the Facility;
- d. The RFI may be conducted in a phased manner, such that the sampling results from the first phase can be used to develop the need for and extent of any subsequent sampling phase(s);
- e. The RFI will be conducted using risk-based screening levels to determine whether there has

been a significant release of constituents of potential interest warranting further investigation; and

- f. The RFI will be designed to develop data that will support future risk-based remedial decisions and to enable the assessment of any risk posed by identified releases of hazardous waste from the Facility as a whole or from significant portions of the Facility.

34. The RFI Workplan shall detail the methodology U.S. Ceramic shall use to:

- a. Gather data needed to make decisions on stabilization during the early phase of the RFI;
- b. Identify and characterize all sources of contamination;
- c. Define the degree and extent of contamination;
- d. Characterize the potential pathways of contaminant migration;
- e. Identify actual or potential human and/or ecological receptors; and
- f. Support the development of alternatives from which a corrective measure will be selected by U.S. EPA.

35. U.S. Ceramic shall include a specific schedule for implementation of all activities in the RFI Workplan.

36. U.S. Ceramic shall submit a RFI Report to U.S. EPA for approval in accordance with the U.S. EPA-approved RFI Workplan schedule.

C. **Corrective Measures Study**

37. U.S. Ceramic shall submit to U.S. EPA a Corrective Measures Study (CMS) Report within 90 days of U.S. EPA approval of the RFI Report. The CMS Report shall be developed in a manner consistent with the CMS Scope of Work in Attachment III.
38. The CMS Report shall detail the methodology for developing and evaluating potential corrective measures to remedy any contamination exceeding Media Cleanup Standards<sup>1</sup> at or from the Facility. The CMS shall identify the potential corrective measures, including any Innovative Treatment Technologies, that may be used for the containment, treatment and/or disposal of contamination.
39. U.S. EPA will provide the public with an opportunity to review and comment on the final draft of the CMS Report (following completion of the approval procedures set forth in Section IX (Agency Approvals/Proposed Contractor)) and a description of U.S. EPA's proposed corrective measure(s), including U.S. EPA's

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<sup>1</sup>. Media Cleanup Standards are described in Attachment II (RFI Scope of Work), and Attachment III (CMS Scope of Work).

justification for proposing such corrective measure(s) (Statement of Basis) and an opportunity for a public meeting regarding U.S. EPA's proposed cleanup standards and remedy for the Facility.

40. Following the public comment period, U.S. EPA may approve the CMS Report and select a final corrective measure(s) or may require U.S. Ceramic to revise the CMS Report and/or perform additional corrective measure studies.

41. U.S. EPA will notify U.S. Ceramic of the final corrective measure(s) selected by U.S. EPA in a Final Decision and Response to Comments. The notification will include U.S. EPA's reasons for selecting the corrective measure(s). Upon U.S. EPA's selection of any necessary corrective measure(s), U.S. Ceramic shall conduct a Corrective Measure(s) Implementation in a manner consistent with the CMI Scope of Work in Attachment IV.

**D. Corrective Measures Implementation**

42. U.S. Ceramic shall submit to U.S. EPA a CMI Workplan within 90 days of receipt of U.S. EPA's final decision and response to comments or corrective measure(s).

43. The CMI Workplan shall be designed to achieve and facilitate the design, construction, operation, maintenance and monitoring of corrective measure(s)

selected by U.S. EPA for the Facility in a manner consistent with the CMI Scope of Work in Attachment IV.

44. U.S. Ceramic shall submit CMI Reports to U.S. EPA in accordance with the U.S. EPA-approved CMI Workplan schedule.

**E. Additional Work**

45. U.S. EPA may determine or U.S. Ceramic may propose that Additional Work, including investigatory work, engineering evaluation, or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in any U.S. EPA-approved workplan, when such Additional Work is necessary to meet the objectives in Section IV (Statement of Purpose). Additional Work may be necessary when new information is obtained, or when new conditions or conditions unknown to U.S. EPA at the time of the entry of this Consent Decree are discovered.
46. U.S. EPA will notify U.S. Ceramic in writing and specify the basis for its determination that Additional Work is necessary consistent with the objectives of this Consent Decree.
47. Within 30 days after receipt of such determination, U.S. Ceramic shall have the opportunity to meet with U.S. EPA to discuss the Additional Work U.S. EPA has requested.

48. If required by U.S. EPA, U.S. Ceramic shall submit for U.S. EPA approval a workplan for the Additional Work. U.S. EPA shall specify the contents of such workplan consistent with the objectives of this Consent Decree. Such workplan shall be submitted within 30 days of receipt of U.S. EPA's determination that Additional Work is necessary, or according to an alternative schedule established by U.S. EPA.
49. Upon approval of a workplan by U.S. EPA, U.S. Ceramic shall implement it in accordance with the schedule and provisions in the Workplan.
50. All disputes about Additional Work in this section shall be resolved according to Section XVI (Dispute Resolution).

#### **IX. AGENCY APPROVALS/PROPOSED CONTRACTOR**

##### **A. Agency Approvals**

51. U.S. EPA will provide U.S. Ceramic with its written approval, approval with conditions and/or modifications, or disapproval with comments on any workplan, report (except progress reports and the DOCC), specification, or schedule submitted for approval pursuant to this Consent Decree. U.S. EPA will provide in writing, a statement of reasons for any approval with conditions and/or modifications, or

disapproval with comments.

52. Unless otherwise agreed to by the U.S. EPA Project Coordinator, within 45 days of receipt of U.S. EPA's disapproval with comments, U.S. Ceramic shall revise and submit an approvable workplan, report, specification, or schedule in accordance with U.S. EPA's written comments.
53. Any disapproval with comments of the first revised or any subsequently revised workplan, report, specification, or schedule shall be deemed a violation of this Consent Decree and subject U.S. Ceramic to the stipulated penalties provision in Section XV of this Consent Decree.
54. Upon receipt of U.S. EPA's written approval or approval with conditions and/or modifications, U.S. Ceramic shall commence work and implement any approved workplan in accordance with the schedule and provisions in the Workplan.
55. Any U.S. EPA-approved report, workplan, specification, or schedule shall be deemed incorporated into this Consent Decree. Prior to U.S. EPA's written approval, no workplan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by U.S. EPA representatives will not constitute U.S. EPA's

approval, nor shall any oral approval or oral assurance of approval be considered binding.

**B. Proposed Contractor**

56. All work performed pursuant to this Consent Decree shall be under the direction and supervision of a professional engineer, hydrologist, geologist, or environmental scientist with expertise in hazardous waste or contaminated soil and groundwater site cleanup (Primary Contractor). U.S. Ceramic's Primary Contractor shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible.
57. Within 14 days of the effective date of this Consent Decree, U.S. Ceramic shall notify U.S. EPA in writing of the name, title, and qualifications of the Primary Contractor to be used in carrying out the terms of this Consent Decree.
58. U.S. Ceramic shall determine whether any Primary Contractor is on the List of Parties Excluded for Federal Procurement or Non-Procurement Programs. U.S. EPA reserves the right to disapprove U.S. Ceramic's Primary Contractor, on reasonable grounds, at any time during the period that the Consent Decree is effective.
59. If U.S. EPA disapproves the Primary Contractor, then U.S. Ceramic must, within 14 days of receipt from U.S.



EPA of written notice of disapproval, notify U.S. EPA, in writing, of the name, title and qualifications of any replacement.

#### **X. QUALITY ASSURANCE**

60. U.S. Ceramic shall follow U.S. EPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control (QA/QC) and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in approved workplans must be approved by U.S. EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.
61. The name(s), addresses, and telephone numbers of the analytical laboratories U.S. Ceramic proposes to use must be specified in the applicable workplan(s).
62. All workplans required under this Consent Decree shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).
63. U.S. Ceramic shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. U.S. Ceramic shall ensure that laboratories it uses perform analyses according to the

latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition inclusive of Final updates I, II, IIa, IIb, III, and any subsequent updates), or other methods deemed satisfactory to U.S. EPA. If methods other than U.S. EPA methods are to be used, U.S. Ceramic shall specify all such methods in the applicable workplan (e.g., RFI).

64. U.S. EPA may reject any data that does not meet the requirements of the approved workplan or U.S. EPA analytical methods and may require re-sampling and additional analyses. Historical validated data that U.S. Ceramic demonstrates is of sufficient quality to meet the data quality objectives shall be acceptable data for the purposes of this Consent Decree.
65. U.S. Ceramic shall ensure that laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by U.S. EPA.
66. U.S. EPA may conduct a performance and QA/QC audit of the laboratories chosen by U.S. Ceramic before, during, or after sample analyses. Upon request by U.S. EPA, U.S. Ceramic shall have its laboratory perform analyses of samples provided by U.S. EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC,

re-sampling and additional analyses may be required.

#### **XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

67. Upon request, U.S. Ceramic shall submit to U.S. EPA the results of all validated sampling and/or tests or other data generated by, or on behalf of, U.S. Ceramic pursuant to this Consent Decree.
68. Notwithstanding any other provisions of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including the right to bring enforcement actions related thereto, under RCRA, CERCLA, and any other applicable statutes or regulations.
69. U.S. Ceramic shall notify U.S. EPA, in writing, at least 14 days prior to beginning each separate phase of field work approved under any workplan required by this Consent Decree.
70. If U.S. Ceramic believes it must commence emergency field activities without delay, U.S. Ceramic may seek emergency telephone authorization from the U.S. EPA Project Coordinator or, if the U.S. EPA Project Coordinator is unavailable, his or her Supervisor, to commence such activities immediately.
71. At the request of U.S. EPA, U.S. Ceramic shall provide or allow U.S. EPA or its authorized representative to

take split or duplicate samples of all samples collected by U.S. Ceramic pursuant to this Consent Decree. Similarly, at the request of U.S. Ceramic, U.S. EPA shall allow U.S. Ceramic or its authorized representative(s) to take split or duplicate samples of all samples collected by U.S. EPA under this Consent Decree. Both U.S. EPA and U.S. Ceramic shall notify the other at least 7 days before conducting any sampling under this Consent Decree.

72. U.S. Ceramic may assert a business confidentiality claim covering all or part of any information submitted to U.S. EPA pursuant to this Consent Decree. Any assertion of confidentiality must be accompanied by information that satisfies the items listed in 40 C.F.R. § 2.204(e)(4) or such claim shall be deemed waived. Information determined by U.S. EPA to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2.

73. If no such confidentiality claim accompanies the information when it is submitted to U.S. EPA, the information may be made available to the public by U.S. EPA without further notice to U.S. Ceramic.

74. U.S. Ceramic agrees not to assert any confidentiality claim with regard to any physical or analytical data.

## XII. ACCESS

75. U.S. EPA, its contractors, employees, and/or any duly designated U.S. EPA representatives are authorized to enter and freely move about the Facility, upon the presentation of proper credentials for any purposes relating to the implementation, monitoring or enforcement of this Consent Decree, including, inter alia:
- a. Interviewing Facility personnel and contractors;
  - b. Inspecting records, operating logs, and contracts related to the Facility;
  - c. Reviewing the progress of U.S. Ceramic in carrying out the terms of this Consent Decree;
  - d. Conducting such tests, sampling, or monitoring as U.S. EPA deems necessary;
  - e. Using a camera, sound recording, or other documentary type equipment; and
  - f. Verifying the reports and data submitted to U.S. EPA by U.S. Ceramic.
76. U.S. Ceramic shall provide U.S. EPA and its representatives access at all reasonable times to the Facility and, subject to paragraph 77 below, to any other property to which access is required for implementation of this Consent Decree. U.S. Ceramic

shall have the right to designate any person to accompany U.S. EPA or any U.S. EPA representative at all times while on the Facility, provided that the designation of such person by U.S. Ceramic does not delay or hinder U.S. EPA's authorized activities. U.S. Ceramic shall permit such persons to inspect and copy all non-privileged records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Decree and that are within the possession or under the control of U.S. Ceramic or its contractors. For purposes of this paragraph and Section XIII (Record Preservation), "privileged" refers to those documents subject to the attorney-client or work product privileges, and does not include documents subject to a claim of business confidentiality.

77. To the extent that work performed pursuant to this Consent Decree must be performed outside the Facility property boundary, U.S. Ceramic shall use its best efforts to obtain access agreements necessary to complete the work required by this Consent Decree from the present owner(s) of such property within 30 days of approval of any workplan for which access is required, or within 30 days of the date that the need for access becomes known to U.S. Ceramic. Best efforts as used in this paragraph shall include, at a minimum, a certified

letter from U.S. Ceramic to the present owner(s) of such property requesting access agreement(s) to permit U.S. Ceramic and its authorized representatives access to such property, and may include the payment of reasonable compensation in consideration of granting access. Any such access agreement shall provide for access by U.S. EPA and its representatives. U.S. Ceramic shall insure that U.S. EPA's Project Coordinator has a copy of any access agreement(s).

78. If U.S. Ceramic does not obtain access agreements within 30 days of approval of any workplan for which access is required, or within 30 days of the date that the need for access became known to U.S. Ceramic, it shall notify U.S. EPA in writing within 14 days of both the efforts undertaken to obtain access and the failure to obtain access agreements.

79. U.S. EPA may, at its discretion, assist U.S. Ceramic in obtaining access. If U.S. EPA obtains access, U.S. Ceramic shall undertake U.S. EPA-approved work on such property. U.S. Ceramic agrees to pay all costs incurred by the United States in obtaining access, including but not limited to attorneys fees and reasonable compensation in consideration of granting access.

80. U.S. Ceramic agrees to indemnify the United States as

provided in Section XXI (Indemnification of the United States), for any and all claims arising from activities by U.S. Ceramic on such property pursuant to this section.

81. Nothing in this section limits or otherwise affects U.S. EPA's rights of access and entry pursuant to applicable law, including RCRA and CERCLA.
82. Nothing in this Section shall be construed to limit or otherwise affect U.S. Ceramic's liability and obligation to perform corrective action including corrective action outside the Facility boundary, notwithstanding the lack of access. However, U.S. Ceramic shall not be subject to stipulated penalties for any delay in work caused by an inability to obtain access, if U.S. EPA, in its discretion, determines that U.S. Ceramic has used best efforts to obtain such access.

### **XIII. RECORD PRESERVATION**

83. U.S. Ceramic shall retain, during the pendency of this Consent Decree and for a minimum of six years after its termination, one set of all data, records, and other non-privileged documents now in its possession or control or which come into its possession or control which relate in any way to this Consent Decree or to hazardous waste management and/or disposal at the



Facility. U.S. Ceramic shall notify U.S. EPA in writing 90 days prior to the destruction of any such records, and shall provide U.S. EPA with the opportunity to take possession of any such non-privileged records. Such written notification shall reference the effective date, caption, and docket number of this Consent Decree and shall be addressed to:

Project Coordinator for United States  
Corrective Action Section Enforcement and  
Compliance Assurance Branch (DE-9J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

84. Within 30 days of retaining or employing any agent or contractor for the purpose of carrying out the terms of this Consent Decree, U.S. Ceramic shall enter into an agreement with any such agents or contractors which requires them to provide U.S. Ceramic a copy of all documents that must be produced pursuant to this Consent Decree.

85. All non-privileged documents relevant to this Consent Decree shall be stored by U.S. Ceramic in a centralized location at the Facility to afford ease of access by U.S. EPA or its authorized representatives.

#### **XIV. REPORTING AND DOCUMENT CERTIFICATION**

86. Beginning with the first full calendar month following

the effective date of this Consent Decree, U.S. Ceramic shall provide U.S. EPA with monthly progress reports. The progress reports are due by the tenth day of each month ( reporting previous month's progress), with the first report including progress from the effective date of this Consent Decree. The progress reports shall conform to requirements in the relevant scope of work contained in the Attachments. U.S. EPA may reduce the frequency of progress reports to be consistent with site-specific activities.

87. Three copies of all documents submitted pursuant to this Consent Decree shall be hand-delivered, sent by certified mail (return receipt requested), or by overnight service to the U.S. EPA Project Coordinator designated pursuant to Section VII of this Consent Decree. Other addresses and additional copies (e.g., Ohio EPA) can also be designated by the U.S. EPA Project Coordinator. All documents submitted pursuant to this Decree shall be printed on recycled paper and shall be copied double-sided whenever practicable. The U.S. EPA Project Coordinator may approve the submittal of less than three copies of any document required pursuant to this Decree.

a. Any report or other document submitted by U.S. Ceramic pursuant to this Consent Decree that makes any

representation concerning U.S. Ceramic's compliance or noncompliance with any requirement of this Consent Decree shall be certified by a responsible corporate officer of U.S. Ceramic or a duly authorized representative. A responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or U.S. Ceramic's Project Coordinator, if delegated the authority from a responsible corporate officer.

- b. The certification required by the preceding paragraph shall be in the following form:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true and complete. As to those portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

#### **XV. STIPULATED PENALTIES**

88. U.S. Ceramic shall pay the following stipulated penalties for each failure to comply with any requirement in this Consent Decree and all Attachments, including any deadline in any plan required to be submitted and implemented pursuant to Section VIII (Work To Be Performed) of this Consent Decree, unless U.S. EPA has modified in writing a compliance date or an approved workplan condition, or there has been an excusable delay as defined in Section XVII (Force Majeure and Excusable Delay).
89. For failure to commence, perform, and/or complete field work pursuant to the terms of this Consent Decree and its Attachments: \$2,000 per day for the first 14 days of such violation, \$5,000 per day for the 15th through 42<sup>nd</sup> day of violation, and \$8,000 per day for each day of such violation thereafter;
90. For failure to complete and submit any workplans or reports (other than progress reports) pursuant to the terms of this Consent Decree and its Attachments, or for failure to notify U.S. EPA of immediate or

potential threats to human health and/or the environment, new releases of hazardous waste and/or new solid waste management units not previously identified, as required by this Consent Decree: \$2,000 per day for the first 14 days of such violation, \$5,000 per day for the 15<sup>th</sup> through 42<sup>nd</sup> day of violation, and \$8,000 per day for each day of such violation thereafter;

91. For failure to complete and submit other written submittals not included in Paragraph 90 of this section pursuant to the terms and provisions of this Consent Decree and its Attachments: \$1,000 per day for the first 14 days of violation, \$2,500 per day for the 15<sup>th</sup> through 42<sup>nd</sup> day of violation, and \$3,500 per day for each day of violation thereafter;

92. For failure to comply with any other provisions of this Consent Decree and its Attachments: \$1,000 per day for the first 14 days of violation, \$2,500 per day for the 15<sup>th</sup> through 42<sup>nd</sup> day of violation, and \$3,500 per day for each day of violation thereafter.

93. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the day of correction of the violation. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Penalties shall continue to

accrue regardless of whether U.S. EPA has notified U.S. Ceramic of a violation.

94. U.S. Ceramic shall pay stipulated penalties within 30 days of receiving U.S. EPA's written demand for payment of the penalties; however, to the extent that U.S. Ceramic invokes the Dispute Resolution procedures under Section XVI (Dispute Resolution) relating to any penalties due, those penalties that are the subject of the dispute shall be payable as provided below. U.S. EPA's written demand will describe the violation and will indicate the amount of penalties due.
95. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the day after payment was due. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, an additional penalty of six percent per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days.
96. Payments due under this Section shall be made in the form of a Fedwire Electronic Funds Transfer ("EFT") to the New York Federal Reserve Bank/U.S. Treasury Department, referencing "USAO" file number 2004V00200, Region V, and the Department of Justice case number 90-7-1-376A. Any EFTs received by the New York Federal

Reserve Bank after 4:00 p.m. (Eastern Time) will be credited to the next working day. At the time of payment, U.S. Ceramic shall send notice of payment and a copy of any transmittal documentation to the United States as specified in Section XXIII (Notice and Submissions) and to the Financial Management Officer, U.S. EPA Region V, Office of Technical and Management Services, 77 W. Jackson Blvd., Chicago, Illinois 60604.

97. U.S. Ceramic may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XVI (Dispute Resolution). Stipulated penalties shall accrue according to paragraphs 88 to 95 of this Consent Decree except stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section IX (Agency Approvals/Proposed Contractor), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies U.S. Ceramic of any deficiency; (2) with respect to a decision by the Director of the Waste, Pesticides and Toxics Division (Division Director), U.S. EPA Region 5, under Paragraph 108 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date U.S. Ceramic submits its Statement of Position to U.S. EPA until the date that the Division Director issues a final decision

regarding such dispute; (3) with respect to judicial review by this Court of any dispute under Section XVI (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute; or (4) during the period, if any, of any appeal by the United States to any federal Court of Appeals regarding any decision made by the district court under the judicial review provisions of Section XVI (Dispute Resolution).

98. Except as provided in paragraph 97, stipulated penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

- a. If the dispute is resolved by informal agreement or by U.S. EPA's Dispute Decision that is not appealed to this Court, accrued penalties determined to be owing shall be paid to U.S. EPA within 15 days of the agreement or the receipt of U.S. EPA's Dispute Decision;
- b. If the dispute is appealed to this Court and the United States prevails in whole or in part, U.S. Ceramic shall pay all accrued penalties determined by the Court to be owed to U.S. EPA within 60 days



of receipt of the Court's decision or order,  
except as provided in Subparagraph c below;

- c. If the District Court's decision is appealed by any Party, U.S. Ceramic shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to U.S. EPA or to U.S. Ceramic to the extent that they prevail.

99. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way U.S. Ceramic's obligation to comply with the terms of this Consent Decree.

100. The stipulated penalties set forth in this section do not preclude U.S. EPA from pursuing any other remedies or sanctions which may be available to U.S. EPA by reason of U.S. Ceramic's failure to comply with any of the terms of this Consent Decree, and U.S. Ceramic retains all rights to contest such actions. Any stipulated penalties paid by U.S. Ceramic shall be offset against any penalties for the same violation which U.S. EPA may be entitled to collect as a result

of other enforcement actions.

101. No payments under this section shall be tax deductible for federal tax purposes.
102. Notwithstanding any other provision of this Section, the United States may, in its sole and unreviewable discretion, defer, reduce or waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

#### **XVI. DISPUTE RESOLUTION**

103. The Parties shall use their best efforts to resolve informally and in good faith, all disputes or differences of opinion. If U.S. Ceramic fails to follow any of the requirements contained in this section then it shall have waived its right to further consideration of the disputed issue. Nothing contained herein is intended to prohibit the informal resolution by the Project Coordinators of issues that may come up from time to time during field work, which are best resolved during the course of such field work.
104. If U.S. Ceramic disagrees, in whole or in part, with any decision, position or lack of decision (Initial Decision) by U.S. EPA pursuant to this Consent Decree, U.S. Ceramic's Project Coordinator shall notify the U.S. EPA's Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the

dispute informally.

105. If the Project Coordinators cannot resolve the dispute informally, U.S. Ceramic may pursue the matter formally by stating its objections in writing in a "Statement of Position". U.S. Ceramic must send its written objections to the U.S. EPA's Project Coordinator and send copies to U.S. EPA's Regional Counsel and the Department of Justice. U.S. Ceramic's Statement of Position must be mailed to such person(s) within 20 days of U.S. Ceramic's receipt of the Initial Decision, or such longer period as the Parties may agree. U.S. Ceramic's Statement of Position must set forth the specific points of the dispute, the position U.S. Ceramic claims should be adopted, the basis for U.S. Ceramic's position, and any matters that it considers necessary for U.S. EPA's determination.

106. After U.S. EPA receives U.S. Ceramic's Statement of Position, the Parties shall attempt to resolve the dispute through formal negotiations. The period of formal negotiations between the Parties may last 20 days. This time period may be extended by mutual agreement of the Parties.

107. After 10 days of formal negotiations, U.S. Ceramic may request a meeting with the U.S. EPA Division Director. U.S. Ceramic shall have the right to submit any

additional written arguments and evidence, not previously submitted, to the U.S. EPA Division Director.

108. Based on the Administrative Record (including U.S. Ceramic submitted documents), U.S. EPA shall provide to U.S. Ceramic its written decision on the dispute ("U.S. EPA Dispute Decision") which shall include a response to U.S. Ceramic's arguments and evidence. U.S. EPA shall issue its Dispute Decision as expeditiously as possible after the end of the 20 days formal negotiation period pursuant to paragraph 106 or once a meeting has occurred.

109. U.S. EPA's Dispute Decision shall be binding on U.S. Ceramic unless, within 10 days of receipt of the Dispute Decision, U.S. Ceramic files with the Court and serves on the United States, a motion for judicial review of U.S. EPA's decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the motion.

110. Judicial review of any Court-filed dispute shall be on the Administrative Record maintained by U.S. EPA (which shall include U.S. Ceramic's submitted documents) and

in accordance with general principles of administrative law. U.S. Ceramic shall have the burden of proving that the United States' position is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. If U.S. Ceramic does not sustain that burden, the United States shall prevail.

111. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of U.S. Ceramic under this Consent Decree, not directly in dispute, unless U.S. EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in Paragraph 94. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree and its Attachments, including any work plan. In the event that U.S. Ceramic does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

#### **XVII. FORCE MAJEURE AND EXCUSABLE DELAY**

112. Force majeure, for purposes of this Consent Decree, is defined as any event arising from causes beyond the

control of U.S. Ceramic or any person or entity controlled by U.S. Ceramic, including but not limited to U.S. Ceramic's contractors, that delays or prevents the timely performance of any obligation under this Consent Decree despite U.S. Ceramic's best efforts to fulfill such obligation. The requirement that U.S. Ceramic exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. U.S. Ceramic shall be deemed to have notice of any circumstances of which its contractors had notice.

113. Force majeure does not include increased costs of work to be performed under this Consent Decree, financial inability to complete the work or plant shutdown (unless the shutdown was caused by a force majeure event).
114. If any event occurs or has occurred that may cause a delay in the timely performance of an obligation under this Consent Decree, whether or not U.S. Ceramic wishes to claim a force majeure event, U.S. Ceramic shall contact by telephone U.S. EPA's Project Coordinator, or

in his/her absence, his/her supervisor, within 48 hours of when U.S. Ceramic first knew or should have known that the event might cause a delay. If U.S. Ceramic wishes to claim a force majeure event, then within 14 days thereafter, U.S. Ceramic shall provide to U.S. EPA in writing:

- a. The anticipated duration of the delay;
- b. All actions taken or to be taken to prevent or minimize the delay;
- c. All other obligations affected by the event, and what measures, if any, taken or to be taken, to minimize the effect of the event on those obligations;
- d. A schedule to implement any measures to be taken to prevent or mitigate the delay or the effect of the delay;
- e. U.S. Ceramic's rationale for attributing such delay to a force majeure event; and
- f. A statement as to whether, in the opinion of U.S. Ceramic based on known or available information, such event may cause or contribute to endangerment to public health or the environment.

115. U.S. Ceramic shall include with any notice all available documentation supporting its claim that the

delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude U.S. Ceramic from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure.

116. If U.S. EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this Consent Decree that is affected by the force majeure event will be extended by U.S. EPA for such time as U.S. EPA determines is necessary to perform such obligation. U.S. EPA will notify U.S. Ceramic in writing of the length of the extension, if any.
117. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation, unless U.S. Ceramic can demonstrate that more than one obligation was affected by the force majeure event.
118. If U.S. EPA disagrees with U.S. Ceramic's assertion of a force majeure event, U.S. EPA will notify U.S. Ceramic in writing within 30 days of receiving U.S. Ceramic's written notice, and U.S. Ceramic may elect to invoke the dispute resolution provision, and shall



follow the time frames set forth in Section XVI (Dispute Resolution). In any such proceeding, U.S. Ceramic shall have the burden of demonstrating by a preponderance of the evidence that the delay or the anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that U.S. Ceramic complied with the requirements of this section. If U.S. Ceramic carries this burden, the delay at issue shall be deemed not to be a violation by U.S. Ceramic of the affected obligation of this Consent Decree identified to U.S. EPA and the Court, and the time for performance of such obligation will be extended by U.S. EPA for such time as is necessary to complete such obligation.

#### **XVIII. COVENANTS NOT TO SUE AND RESERVATION OF RIGHTS**

119. In consideration of the actions that will be performed and the payments that will be made by U.S. Ceramic under the terms of the Consent Decree, except as specifically provided in paragraphs 120, 121, 122, and 123 of this Decree, the United States covenants not to sue or to take administrative action against U.S. Ceramic pursuant to Sections 3008(a), (g) or (h) of

RCRA, 42 U.S.C. §§ 6928 (a), (g) or (h): (1) for those civil claims relating to the U.S. Ceramic Facility which arose prior to the date of lodging of this Decree and which have been alleged in the Complaint; and (2) for claims for stipulated penalties for any violations of the 1988 Judicial Consent Decree. Because this Consent Decree supplants the 1988 Judicial Consent Decree, the United States' covenant applies to any alleged or potential violations invoked under the 1988 Judicial Consent Decree.

120. The United States expressly reserves, and this Consent Decree shall be without prejudice to, any right of the United States: (1) to pursue any remedies available to the United States for any violation of this Decree; (2) except to the extent otherwise limited by this Consent Decree, to assert claims for civil penalties, injunctive relief, or any other remedy available to the United States for any violation of federal laws and regulations; (3) to bring any action pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973; and (4) to take any action and assert any claim relating to any criminal liability of U.S. Ceramic.

121. U.S. EPA reserves the right to disapprove work performed by U.S. Ceramic pursuant to this Consent Decree and to order U.S. Ceramic to perform additional

tasks, subject to the provisions in Section XVI  
(Dispute Resolution).

122. U.S. EPA reserves the right to: (1) take any action and assert any claim pursuant to the Emergency Planning and Community Right-To-Know Act EPCRA, 42 U.S.C. § 11001 et seq.; and (2) perform any portion of the work consented to herein or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health and/or the environment. U.S. EPA may exercise its authority under CERCLA to undertake response actions at any time. In any event, U.S. EPA reserves its right to seek reimbursement from U.S. Ceramic for response costs incurred by the United States. Notwithstanding compliance with the terms of this Consent Decree, U.S. Ceramic is not released from liability, if any, for any response actions, or the costs relating to such actions, taken or authorized by U.S. EPA, and U.S. Ceramic reserves all of its rights and defenses thereto.

123. If U.S. EPA determines that activities in compliance or noncompliance with this Consent Decree have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health and/or the environment, or that U.S. Ceramic is not capable of

undertaking any of the work required by this Consent Decree, U.S. EPA may order U.S. Ceramic to stop further implementation of this Consent Decree for such period of time as may be needed to abate any such release or threat and/or to undertake any action which U.S. EPA determines is necessary to abate such release or threat, and U.S. Ceramic reserves all of its rights and defenses with respect thereto.

124. This Consent Decree is not intended to be nor shall it be construed to be a permit. Further, the Parties acknowledge and agree that U.S. EPA's approval of a scope of work or any final workplan does not constitute a warranty or representation that the scope of work or workplan will achieve the required cleanup or performance standards. Compliance by U.S. Ceramic with the terms of this Consent Decree shall not relieve U.S. Ceramic of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

125. In any action brought by U.S. EPA for a violation of this Consent Decree, U.S. Ceramic shall bear the burden of proving that U.S. EPA's actions were arbitrary, capricious, an abuse of discretion, not in accordance with law, or inconsistent with the terms of this Consent Decree.

126. Except as provided in this Consent Decree, in any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Facility, U.S. Ceramic shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding should have been raised in the present matter. U.S. Ceramic reserves any other rights or defenses it might have concerning any future claims of the United States except as specifically provided herein.

#### **XIX. OTHER CLAIMS**

127. Except as is provided elsewhere in this Consent Decree, nothing in this Consent Decree shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or

taken from, or migrating from the Facility.

128. U.S. Ceramic waives any claims or demands for compensation or payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, or any other provision of law, against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred pursuant to this Consent Decree. Additionally, this Consent Decree does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

#### **XX. OTHER APPLICABLE LAWS**

129. All actions required to be taken pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, State, and federal laws and regulations.

130. U.S. Ceramic shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **XXI. INDEMNIFICATION OF THE UNITED STATES**

131. U.S. Ceramic agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account

of negligent acts or omissions of U.S. Ceramic or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Consent Decree.

132. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of U.S. Ceramic or the United States under their various contracts.

#### **XXII. FINANCIAL ASSURANCE**

133. Within 30 days of the effective date of this Consent Decree, U.S. Ceramic shall establish and maintain financial assurance, in the amount of \$1,000,000, in a form (or forms) permitted under 40 C.F.R. §§ 264.143 and 264.145, and with updates as required by 40 C.F.R. §§ 264.142 and 264.144, for the implementation of the Landfill Interim Measures (including Interim O&M).

(For purposes of this Consent Decree, the model certifications should be modified to replace the terms "closure" and "post-closure" with "corrective action" and "operation and maintenance" referencing this Consent Decree as approved by U.S. EPA.) Upon completion of the Landfill Interim Measures, this financial assurance may be reduced to an amount sufficient to cover the long term obligations for the landfill (i.e., the effective equivalent of "post-

closure" financial assurance associated with the landfill).

134. Within 90 days of U.S. EPA's selection of the final corrective measures to be implemented by U.S. Ceramic at the Facility, U.S. Ceramic shall establish and maintain financial assurance for the implementation of the final corrective measures using one or more of the forms identified in the above-cited regulations; the total amount of financial assurance required under this paragraph shall incorporate long term operation and maintenance costs. Upon completion of the final corrective measures, financial assurance obligations will cease except that U.S. Ceramic shall ensure continued financial assurance for long-term operation and maintenance associated with the final corrective measures (and the landfill as required by Paragraph 133) in a legal mechanism acceptable to U.S. EPA.

#### **XXIII. NOTICE AND SUBMISSIONS**

135. Except as stated otherwise (for example Section XIV (Reporting and Document Certification) and Section VI (Civil Penalty Payment), the Parties shall address any information, report, or notice required by this Consent Decree as specified below. All notices and submissions shall be deemed submitted on the date that they are postmarked.



As to the United States:

Chief, Environment Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
DOJ # 90-5-2-1-06709

U.S. Environmental Protection Agency  
Region 5  
Office of Regional Counsel, C-14J  
Attn: Stuart Hersh  
77 West Jackson Boulevard  
Chicago, IL 60604

Branch Chief  
RCRA Enforcement Branch  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard, DE-9J  
Chicago, IL 60604

As to U.S. Ceramic

David Reader  
Vice President  
United States Ceramic Tile Company  
10233 Sandyville Road, N.E.  
East Sparta, OH 44626

Earl C. Sheehan, Esq  
United Bank Building, Suite 1140  
220 Market Street South  
Canton, OH 44702

#### **XXIV. MODIFICATION**

136. Except as specifically provided for herein, there shall be no modification or amendments of this Consent Decree without written agreement of the Parties to this Consent Decree and approval by this Court.

138. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

139. Nothing contained herein is intended to inhibit the U.S. EPA Project Coordinator's ability to authorize minor modifications as may be necessary or appropriate. However, any such authorizations for minor modifications which are given orally shall be reduced to writing, signed by both Parties and incorporated into this Consent Decree, as soon as practical thereafter.

140. No informal advice, guidance, suggestions or comments by U.S. EPA regarding reports, plans, specifications, schedules or any other writing submitted by U.S. Ceramic will be construed as relieving U.S. Ceramic of its obligation to obtain written approval, if and when required by this Consent Decree.

#### **XXV. SURVIVABILITY/PERMIT INTEGRATION**

141. Except as otherwise expressly provided in this section,

this Consent Decree shall survive the issuance or denial of a RCRA permit for the Facility, and this Consent Decree shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, U.S. Ceramic shall continue to be liable for the performance of obligations under this Consent Decree notwithstanding the issuance or denial of such permit. In the event that a final and effective permit for U.S. Ceramic is issued that is not in conformance with this Consent Decree, U.S. Ceramic retains any rights it may have to seek review of that permit and to seek modification or amendment of this Consent Decree in accordance with the Federal Rules of Civil Procedure.

#### **XXVI. SEVERABILITY**

142. If any provision or authority of this Consent Decree or the application of this Consent Decree to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Consent Decree shall remain in force and shall not be affected thereby.

## XXVII. SUBMITTAL SUMMARY

143. Table 1, as follows, is a summary of the major deadlines required by this Consent Decree. To the extent that this section is inconsistent with any other section of this Consent Decree, such other section rather than this summary shall prevail.

Table 1

Submittal Summary

PARAGRAPH	ACTION	DUE DATE
19	Provide Consent Decree to contractors and laboratories	Within 14 days of entry of the Consent Decree or retention, whichever is later
20	Notify U.S. EPA of transfer of ownership	30 days prior to such scheduled transfer, if practicable, but not later than 10 days prior to transfer

PARAGRAPH	ACTION	DUE DATE
23	Pay civil penalty to the United States	On or by 30 days after entry of the Consent Decree
25	Designate a Project Coordinator and Notify U.S. EPA in writing	Within 15 days of the effective date of the Consent Decree
30	Submit Landfill IM Workplan	Within 90 days of the effective date of the Consent Decree
31	Assess the need for further Interim Measures	Within 120 days of the effective date of the Consent Decree
31.c	Submit IM Workplan	Within 30 days of receipt of U.S. EPA's request/determination or upon written request
32	Submit DOCC	Within 120 days of the effective date of this Consent Decree
33	Submit RFI Workplan	Within 90 days of receipt of U.S. EPA comments on the DOCC
36	Submit RFI Report	As scheduled in approved RFI Workplan

PARAGRAPH	ACTION	DUE DATE
37	Submit CMS Report	Within 90 days of receipt of U.S. EPA approval of RFI Report
42	Submit CMI Workplan	Within 90 days of receipt of U.S. EPA's decision of corrective measures
44	Submit CMI Report(s)	As scheduled in approved CMI Workplan
48	Submit workplan for Additional Work	If necessary, within 30 days of receipt of U.S. EPA determination
52	Revise and submit document disapproved with comments	Within 45 days of receipt of U.S. EPA's disapproval with comments
57	Notify U.S. EPA in writing of proposed Primary Contractor	Within 14 days of the effective date of the Consent Decree
69	Notify U.S. EPA prior to beginning each separate phase of field work	14 days prior to beginning field activities
71	Notify U.S. EPA prior to conducting sampling	At least 7 days before conducting samples

PARAGRAPH	ACTION	DUE DATE
77	Obtain access agreements	If necessary, within 30 days of approval of workplan where access is required, or within 30 days of the date that the need for access becomes known to U.S. Ceramic
83	Notify U.S. EPA prior to destructing of documents or records that relate to this Consent Decree	90 days prior to destruction
84	Enter into agreement with contractors requiring them to provide copies of documents required under the Consent Decree	Within 30 days after retaining contractor
86	Submit monthly progress reports	On the tenth day of each month
105	Submit Statement of Position to initiate formal dispute resolution	Within 20 days of receipt of U.S. EPA's Initial Decision

PARAGRAPH	ACTION	DUE DATE
107	Request meeting with U.S. EPA Region V Division Director during formal dispute resolution	Within 10 days of U.S. Ceramic's Statement of Position
109	Submit motion for judicial review of U.S. EPA's Dispute Decision	Within 10 days of receipt of U.S. EPA's Dispute Decision
114	Submit notice of Force Majeure event	Within 48 hours by telephone, and within 14 days thereafter in writing
133	Provide financial assurance for implementation of the Landfill Interim Measures, including Interim O&M	Within 30 days of the effective date of this Consent Decree
134	Provide financial assurance for the implementation of final corrective measures	Within 90 days of U.S. EPA's selection of the final corrective measures



## XXVIII. TERMINATION

144. Once U.S. Ceramic determines it has fully complied with all of the requirements of this Consent Decree, it shall submit to U.S. EPA a certification of compliance. The certification shall contain the following statement, signed by the President or the Vice President of U.S. Ceramic:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this certification is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If U.S. EPA concurs in the certification of compliance that U.S. Ceramic has fully satisfied the requirements of this Consent Decree, the Parties shall file a joint motion with the Court to terminate this Consent Decree. After passage of 120 days from U.S. Ceramic's submission to U.S. EPA of a certification of compliance, U.S. Ceramic may file a motion with the Court to terminate this Consent Decree. U.S. EPA reserves its rights to oppose or support U.S. Ceramic's motion. Notwithstanding the termination of this Consent Decree, U.S. Ceramic's obligations to preserve all records as required in Section XIII Record Preservation, to conduct operation and maintenance, and

to fund operation and maintenance, shall remain in effect as an order of the Court.

**XXIX. EFFECTIVE DATE/TERMINATION OF 1988 CONSENT DECREE**

145. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

146. Upon entry of this Consent Decree, the 1988 Judicial Consent Decree (Civil Action No. C86-5152A) will terminate.

**XXX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

147. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. U.S. Ceramic consents to the entry of this Consent Decree without further notice.

148. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as

evidence in any litigation between the Parties.

### XXXI. SIGNATORIES/SERVICE

149. The undersigned representative of U.S. Ceramic and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice each certify that he or she is fully authorized to enter into the terms of this Consent Decree and to execute and legally bind such the Party he or she represents to this document.
150. U.S. Ceramic shall not oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified U.S. Ceramic in writing that it no longer supports entry of the Consent Decree.
151. U.S. Ceramic shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of U.S. Ceramic with respect to all matters arising under or relating to this Consent Decree. U.S. Ceramic agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.

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United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the  
matter of United States v. U.S. Ceramic Tile Company,

FOR THE UNITED STATES OF AMERICA

Date: 11.30.04

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THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, DC 20530

Date: \_\_\_\_\_



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ESPERANZA ANDERSON  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, DC 20530


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. U.S. Ceramic Tile Company,

FOR THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

Date: \_\_\_\_\_

 BHARAT MATHUR   
Regional Administrator  
Region 5  
U.S. Environmental Protection  
Agency  
77 West Jackson Boulevard, R-19J  
Chicago, Illinois 60604-3590

Date: \_\_\_\_\_

 STUART HERSH  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

THE UNDERSIGNED PARTY enters into this Consent Decree in the  
matter of United States v. U.S. Ceramic Tile Company,

FOR UNITED STATES CERAMIC TILE COMPANY

Donald E. Olsen

8/12/04

Name of Officer (please print or type)

Date

/  
Signature of Officer

President

Title

4244 Mt. Pleasant St. N.W. Suite 100

Address North Canton, Ohio 44720

Agent Authorized to Accept Service on Behalf of Above-signed  
Party (please type):

Name: Earl C. Sheehan

Title: Attorney

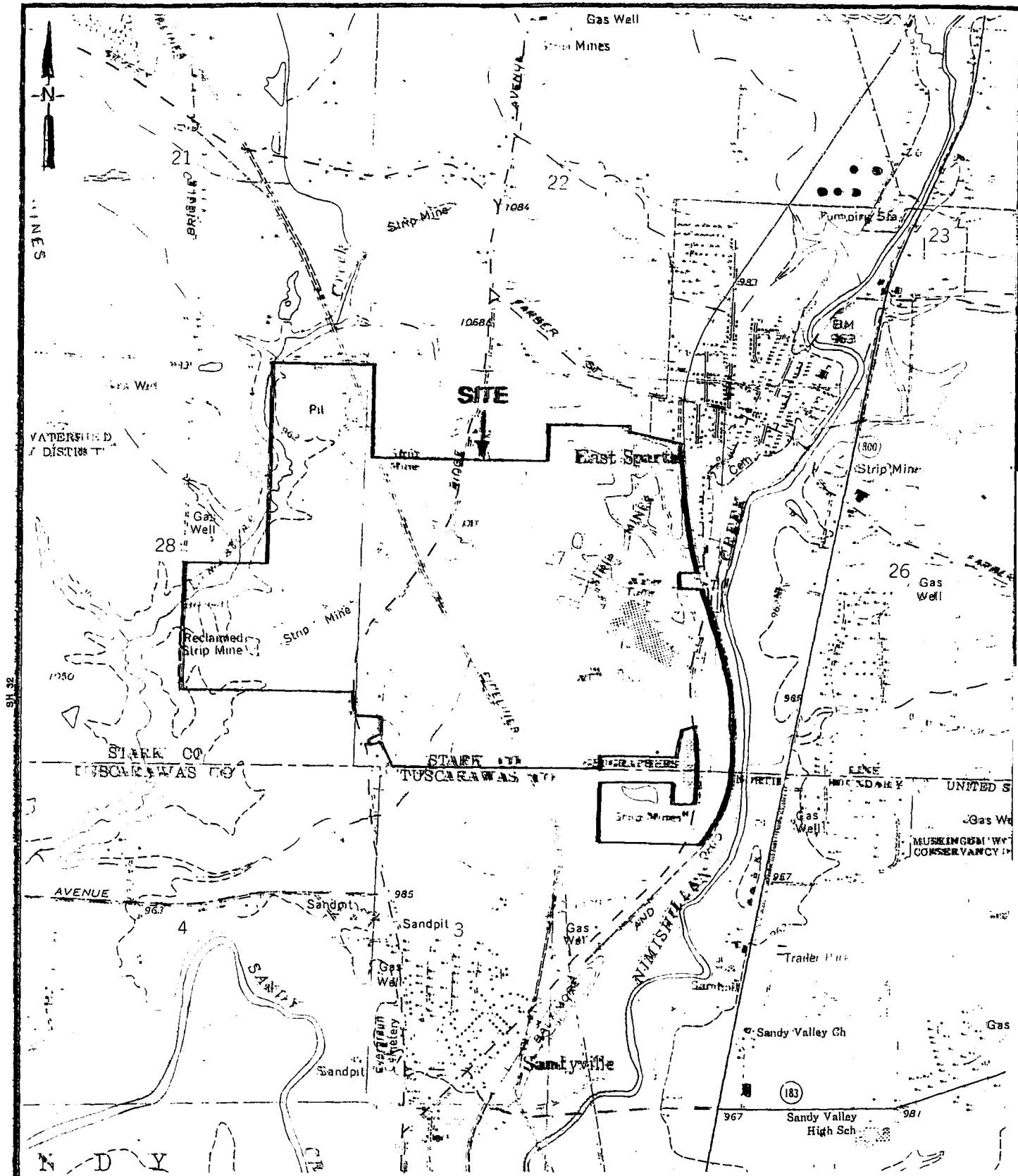
Address: 220 Market Avenue, S

Suite 1140

Canton, OH 44702

Tel. Number: 330-455-5379

\*/ A separate signature page must be signed by each  
corporation, individual or other legal entity that is  
settling with the United States.



0 2000 4000  
SCALE IN FEET

BASE MAP SOURCE: Compiled from the following  
USGS 7 1/2 minute topographic quadrangle maps:  
Bdilar, Ohio 1961, photorevised 1967 and 1978;  
Waynesburg, Ohio 1961, photorevised 1971 and 1978.

# **U.S. CERAMIC TILE COMPANY** EAST SPARTA, OHIO

**FIGURE 1**  
**SITE VICINITY MAP**

Dames & Moore

JOB NO. 13729-D20-32